

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

REBECKAH AUBERTIN,

Plaintiff,

v.

No. 2:22-cv-732 GJF/KRS

JIMMY A. CASTLE,
AC FREIGHT SOLUTIONS, INC.,
LENITA'S EXPRESS, INC.,
and FIRST GUARD INSURANCE COMPANY,

Defendants.

ORDER SETTING DEADLINE

THIS MATTER comes before the Court on Plaintiff's Response to the Court's Order to Show Cause, (Doc. 7), filed January 18, 2023. On January 5, 2023, the Court entered an Order to Show Cause, noting that no answer or other responsive pleading has been filed by Defendant First Guard Insurance Company and more than ninety days has passed since Plaintiff took any step to move this case forward as to that Defendant. (Doc. 6). The Court ordered Plaintiff to show cause why this case should not be dismissed as to Defendant First Guard Insurance Company for failure to prosecute.

In Plaintiff's Response to the Order to Show Cause, she confirms that she served Defendant First Guard Insurance Company prior to the case being removed to this Court. (Doc. 7). Plaintiff states that shortly after service on Defendant First Guard Insurance Company, a representative from the company informed Plaintiff's counsel that no liability coverage was secured with the policy. *Id.* at 2. Plaintiff states that she "agreed to extend the deadline for filing an Answer, and further agreed to not take any action against First Guard Insurance Company, or to seek a Default Judgment, until such time as adequate discovery has been undertaken with the

remaining Defendants to determine their coverage(s) with the First Guard Insurance Company.”

Id. Plaintiff further states she does not want to dismiss this Defendant at this time, and asks the Court to “retain the Defendant First Guard Insurance Company as a party” until “a determination can be made regarding their liability.” *Id.*

It is not the Court’s practice to set an initial scheduling order or discovery deadlines until all parties are in a case because it would be inefficient and costly if discovery must be restarted when an additional party later enters the case. Therefore, the Court will require Plaintiff to either file a motion to stay the case as to Defendant First Guard Insurance Company, or notify Defendant First Guard Insurance Company that it must file an answer or other responsive pleading and enter an appearance in this case. Once a determination is made as to Defendant First Guard Insurance Company’s participation in the case, the Court will enter an initial scheduling order and set a Rule 16 scheduling conference.

IT IS THEREFORE ORDERED that **on or before February 10, 2023** Plaintiff shall either file a motion to stay the case as to Defendant First Guard Insurance Company, or inform the Court of the date Defendant First Guard Insurance Company will file an answer or other responsive pleading in this case. If Plaintiff files a motion to stay, she must determine whether it is opposed by all parties in the case. *See* D.N.M. LR Civ. 7.1(a).



KEVIN R. SWEAZE
UNITED STATES MAGISTRATE JUDGE